

RECEIVED IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

2005 AUG 10 P 12:57

FRANK FISCHER, an individual,
DEBRA P. FISCHER, d/b/a
U.S. DISTRICT COURT
MIDDLE Plaintiff, et al.
vs.
SYSCO FOOD SERVICES OF CENTRAL
ALABAMA, INC., et al.,
Defendants.

CIVIL ACTION NO. 2:05cv763-B
(Removed from the Circuit Court of
Montgomery County, Alabama, CV-
2005-1630)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(d), Defendant Sysco Food Service of Central Alabama, Inc., hereby gives notice of the removal of this action from the Circuit Court of Montgomery County, Alabama, where it is now pending, to the United States District Court for the Middle District of Alabama, Northern Division. As grounds for this removal, Defendant shows as follows:

1. This action was commenced against Defendant in the Circuit Court of Montgomery County, Alabama, on June 30, 2005, when Plaintiff's Complaint was filed. True and correct copies of all the pleadings, process and orders served upon Defendant in said action are attached hereto as Exhibit 1 and incorporated herein.

2. The initial pleading setting forth the Plaintiff's claims for relief was first received by Defendant on July 11, 2005, when the Complaint was served. See Exhibit 2.

3. Plaintiff's Complaint alleges a claim under the Federal Age Discrimination in Employment Act, which is a law of the United States, for purposes of 28 U.S.C. § 1331. See Complaint, Count Three, ¶¶ 13-16.

4. Because Plaintiff alleges a claim arising under a law of the United States, United States District Courts have original jurisdiction of this action under 28 U.S.C. § 1331. This case is thus removable to this Court pursuant to 28 U.S.C. § 1441.

5. Except as stated in paragraph 6, this Court has supplemental jurisdiction of any claims of which this Court might find it does not have original jurisdiction, because such claims, if any, are so related to Plaintiff's claims arising under the laws of the United States that they form part of the same case or controversy.

6. Counts One and Two of Plaintiff's Complaint allege claims arising under Alabama workers' compensation laws, which are non-removable under 28 U.S.C. § 1445(c). Accordingly, Counts One and Two should be remanded. See Reed v. Heil Co., 206 F.3d 1055, 1058-61 (11th Cir. 2000). This Court should retain jurisdiction over all claims in Count Three. See id., at 1061-63.

7. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Montgomery County, Alabama, and is being served on all adverse parties.

WHEREFORE, the Defendant in this cause prays that this Court will make any and all orders necessary to effect the removal of this cause from the Circuit Court of

Montgomery County, Alabama, and to effect and prepare in this Court the true record of all proceedings that may have been had in the Circuit Court of Montgomery County, Alabama.

This the 10th day of August 2005.



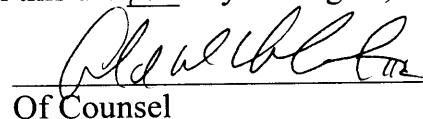
Arnold W. Umbach, III
(ASB-1932-M66A)
Attorney for Defendant, Sysco Food Services of Central Alabama, Inc.

OF COUNSEL:

STARNES & ATCHISON, LLP
Seventh Floor, 100 Brookwood Place
Post Office Box 598512
Birmingham, AL 35259-8512
(205) 868-6000

CERTIFICATE OF SERVICE

I do hereby certify that I have caused a copy of the foregoing pleading to be mailed to counsel for all parties to this action on this the 10 day of August, 2005.



Of Counsel

cc:

Davis L. Middlemas, Esq.
SOUTHLAW, P.C.
3120 AmSouth/Harbert Plaza
1901 6th Avenue North
Birmingham, AL 35203